

BRIGHAM CITY APPEAL AUTHORITY
JANUARY 10, 2007 – MEETING MINUTES

PRESENT:	George Berkley	Chairman
	Martha Shoun	Vice Chairman
	Don Peart	Board Member
	Jess Palmer	Alternate
	Jaye Poelman	Alternate
ALSO PRESENT:	Jeff Leishman	Associate Planner
	Marilyn Peterson	Board Member (arrived late and participated but did not vote)

AGENDA:

1. Election of Chair and Vice Chair for 2007 Calendar year
2. Approval of the November 8, 2006 meeting minutes
3. Review Bylaws of the Appeal Authority

Meeting convened at 5:36 p.m.

Approval of Agenda:

Motion: Martha Shoun moved to approve the agenda as written. The motion was seconded by Jess Palmer and passed unanimously.

Election of Chair and Vice Chair 2007:

Motion: Don Peart proposed to leave the positions as currently constituted, as there was only one meeting last year. The motion was seconded by Jaye Poelman.

Discussion: Mr. Leishman questioned whether the Chair and Vice Chair could serve more than two consecutive terms then realized he had read the Bylaws incorrectly. Mr. Berkley and Ms. Shoun considered if they wanted to accept another term.

The motion passed unanimously.

Approval of Minutes:

Martha stated that she felt the approval of the motion and amendment were not stated clearly enough in the minutes and was concerned about that being an issue for a potential law suit. The group discussed procedure for motions and Mr. Berkley said he thought the minimum requirements were more than covered. He clarified that there was an additional vote to make sure all were in agreement with the amendment and then voted a final time on the motion with the amendment. Mr. Peart asked if the Bylaws needed to be changed, he felt they were adequate as they are. Ms. Shoun stated her belief that all meetings should be conducted according to Robert's Rules of Order. It was asked that the minutes be revised to include the additional motions and actions that were taken to update the minutes as to what was done. Also, when the Bylaws are reviewed, have the attorney see if what is written in the Bylaws is compliant with Robert's Rules and if they are not, have them revised them so they will be. The motion from the November 8, 2006 minutes was read and it was asked that the tape be reviewed to see if Ms. Peterson's motion specifically stated what business may need to be resolved and, if so, have it identified in the minutes and if it is not found, leave the motion the way it currently reads.

Motion: A motion was made by Don Peart to continue the approval of the November 8, 2006 meeting minutes until they have been reviewed, updated and amended. The motion was seconded by Martha Shoun and passed unanimously.

Motion: A motion was made by Martha Shoun to have a meeting set when the minutes are corrected so they can be approved and possibly continue the review of the Bylaws until more information is received. The motion was seconded by Jaye Poelman.

Discussion: Mr. Berkley asked Ms. Shoun if she felt the meeting stated in her motion needed to be an extra meeting or the next meeting scheduled for February. Ms. Shoun suggested continuing the bylaws, until answers to their questions can be found, to the March meeting. Mr. Leishman said that the new Utah Municipal Code Appeal Authority document is what was before the group for review at this meeting. This body is no longer the Board of Adjustment; it is now the Appeal Authority. That section in the Utah Code has been rewritten in its entirety. Under 10-9a-707 Standards of review for appeals it states 'A municipality may, by ordinance, designate the standard of review for appeals of land use authority decisions. If the municipality fails to designate a standard of review of factual matters, the Appeal Authority shall review the matter. In the City Code, which also needs to be changed, 'The Board of Adjustment shall adopt bylaws for the regulation of its procedure and the conduct of its duties, not inconsistent with the provisions of this Title or of the Utah Code'. Even though Robert's Rules of Order are the standard in the industry as to how business is conducted, the two need to be blended together. It was asked if the motions need to follow the letter of the law, as stated in the Code, or will the City designate the rules and procedure as to how all business will be conducted. Mr. Leishman said that is the question he will bring to the Attorney; how much flexibility is there in conducting business and if Robert's Rules need to be followed religiously or as a guideline. He suggested following the attorney's advice and then establish, in the bylaws, the procedure, as to the motions, and follow that. Mr. Berkley said he thought it would be nice if they had it in their bylaws, what the requirements are in regards to following Robert's Rules of Order, within reason. Mr. Peart stated that he was in favor of meeting in a couple of months depending on what they find in reviewing the bylaws. He said he was not sure he was in favor of meeting in February just to approve the minutes. Mr. Leishman suggested meeting in the first quarter or as soon as the information is prepared, reviewed by the attorneys and made available, unless there is a scheduled application. Mr. Leishman gave the board the new Appeal Authority Utah Code and Chapter 2, Board of Adjustment, which needs to be rewritten. Ms. Shoun asked if it would be prudent to have the members of the board to get a copy of those documents and review them thoroughly to be able to blend the two documents more efficiently. Mr. Berkley recommended that Ms. Shoun withdraw her motion to identify a need for an additional meeting in a certain time frame until the end of this meeting and, at that point, determine if it is necessary.

Martha Shoun withdrew the motion.

Review Bylaws of the Appeal Authority:

The term 'Board of Adjustments' has been changed to be 'Appeal Authority'. Mr. Berkley suggested that throughout the document where the word or words 'Board of Adjustments' are referenced, they should be replaced with the words 'Appeal Authority'. Mr. Leishman suggested they have the Staff look at both documents and reference any conflict and give them a copy of recommended changes. Mr. Berkley thought that was a good idea, as the Staff understands the terminology of the codes that have to be abided by. He suggested that Staff highlight their recommended changes. Mr. Leishman suggested making changes with conflicts the Staff sees and the Appeal Authority could fine tune those suggestions. Mr. Berkley said Staff is much better qualified in determining how to make the bulk of it compliant with Utah State Code, Robert's Rules of Order and make the verbiage fit legally. All agreed that would be the best way to proceed. There were some additional suggestions.

In A-1, last sentence of that paragraph, Mr. Berkley recommended deleting that sentence as the Board of Adjustments had already been established, members selected and term expiration determined.

Marilyn Peterson joined the meeting. Mr. Leishman said she would participate but not vote.

In regards to section A-1 where it talks about the Chief Executive Officer (CEO) appointing members of the first Board of Adjustment and the term expiring each year, Ms. Peterson believed that is relative in stating the timely manner in which the CEO makes appointments. She believes the word 'first' should be deleted because they are an existing organization and have the sentence reworded rather than deleted entirely. Each slot that is being filled by the members in this current body is associated with a year that a person was previously occupying that position. Mr. Leishman made a recommendation to reword that sentence to read, "The Chief Executive Officer, with the advice and consent of the City Council, shall appoint members of the Appeal Authority to terms so that the term of one member expires each year". The CEO has to have the consent of the City Council to appoint any board member. That would take care of the problem of Mr. Berkley and Ms. Shoun leaving their appointments at the same time. Everyone agreed to that change in verbiage.

In section B-1, Mr. Berkley suggested adding the election of a Vice Chairperson, if allowed by the Utah Code. Ms. Peterson asked if the group was going into a work session or if Staff was going to go through the documents and fine tune them first. Mr. Berkley commented that there were some things he wanted clarified before turning it over to Staff. Ms. Shoun said that the second sentence clarified that the Vice Chairperson would be elected. It was decided to let Staff update that as needed; subject to the Utah Code.

In section B-4, in stating the terms of election for the Chair and Vice Chair, Mr. Berkley suggested that the terms be clarified to read 'one calendar year' instead of 'one year' and at the first of the new calendar year have the election of new officers. It was also suggested to add that the current Chairperson or Vice Chairperson from the previous calendar year shall preside over the first meeting of the new calendar year until a new Chairperson and/or Vice Chairperson is elected. Ms. Shoun said that according to Robert's Rules of Order, the previous Chairperson takes charge until his replacement is elected and then the newly elected Chairperson takes over the meeting.

In section D-2, in regards to continued or unfinished business, hearing of new business and other business, Mr. Berkley stated that when he went to training it seemed there were some things that were no longer allowed and needed to be eliminated because of changes in the laws and the Utah Code.

In regards to section F, Mr. Leishman is going to check on what Robert's Rules of Order really require. Ms. Peterson asked if it would be adequate to have an appendix to Robert's Rules and have any questions refer to the appendix rather than making the bylaws really lengthy with additions specific to those rules. Ms. Shoun stated it would be good for the Chairperson to have a copy of Robert's Rules of Order. She suggested that when making motions, look up that section in Robert's Rules and if there is anything unclear in the bylaws that are in Robert's Rules, then add to the sentence or revise it. She also explained that when a motion is made and seconded, if there is discussion and an amendment to the motion then the amendment to the motion is voted on prior to the original motion; the original motion is voted on with the amendment after the amendment has been made and voted on. Mr. Peart suggested adding some basics in the bylaws that they will normally proceed with and then a general statement that they will follow Robert's Rules of Order, otherwise.

In section E, number 4, the wording should be changed since motions can be continued but not tabled. Continuing an item would be appropriate in two conditions; when all the facts are not available, Staff can be directed to get those facts so the group can make an educated decision or if the meeting is volatile and the situation is a no-win for either side, it is advisable to continue the item to give time to digest what input has been given. The applicant has the responsibility to provide all the information to prove his case. If that applicant has not addressed all the items and additional evidence is going to help make an intelligent decision than continuing is advisable, in all fairness to the applicant.

In section D-1, its states "the Board may motion and vote to continue an item for incompleteness one time without prejudice to the petitioner". Mr. Berkley asked if the words "one time" were really needed in that phrase. Mr. Leishman said there is some reasonable expectation that the applicant and the City are going to provide a complete package. He said he did not see a difficulty in striking those words. It is up to the members of this body to decide if continuance is really advantageous. Mr. Peart thought the phrase should be stricken. Continuation for the applicant is discussed in section E, which is different than section D, which is relating to the board. Mr. Berkley suggested striking the phrase in section D but leaving section E alone. That gives the board leeway to continue an application as many times as they choose but the applicant allowance to continue only one time. Ms. Peterson agreed with Mr. Peart and Mr. Berkley.

In section I, Conflict of Interest – 3, the paragraph that talks about the member of the Planning Commission needs to be deleted because there is no longer a Planning Board member as a member of the Appeal Authority.

Mr. Berkley asked if it was necessary to keep the wording in section M-1, that references the secretary keeping track of the attendance and training of the members and including that in the January and July minutes each year. Mr. Leishman suggested that including that information would be good for risk management and would give credibility to a layman's position on the board. That has not been done but a record of training should be kept to show the members are trained in what they do. Ms. Peterson suggested that it be changed to say that it will be reviewed yearly because there have been consecutive years that the Chairperson has been voted on in a month other than January and it has just been established that the meeting to vote and elect the Chairperson will be done in the first quarter of the year. At that same time, it would be advantageous to have the yearly business taken care of so there is not a worry about doing so twice a year. Mr. Berkley said Staff should determine if that is something that really needs to be tracked and reported in the minutes. If that is the case, then he agreed that it should be given more latitude as to first quarter or first meeting of the year. It should be recorded annually and the members asked if they have been to training and notified of upcoming training.

Mr. Berkley said he thought they were to the point where they could entertain a motion to have Mr. Leishman and Staff consider the comments that have been made and to further evaluate those comments against the Utah Municipal Code changes and any other changes; then come back with a draft that the group can review.

Motion: Don Peart so moved Mr. Berkley's comments. The motion was seconded by Martha Shoun and passed unanimously.

Motion: A motion was made by Martha Shoun to adjourn. The motion was seconded by Jess Palmer and passed unanimously.

The meeting adjourned at 6:45 p.m.

This certifies that the minutes of January 10, 2007 are a true and correct copy as approved by the Appeal Authority on November 14, 2007.

Signed: _____
Jeffery R Leishman - Secretary